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Message Text

PAGE 01 STATE 176204

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FOLLOWING REPEAT SAN JOSE 2996 SENT SECSTATE DATED JULY 19.

QUOTE

LIMITED OFFICIAL USE SAN JOSE 2996

USDEL 012

FOR IMMEDIATE DELIVERY TO USOAS (MOON) AND L/ARA (;(9"-()

E.O. 11652: N/A
TAGS: OCON, OAS
SUBJECT: SAN JOSE CONFERENCE -
IO TRATY ARTICLES 2 AND 3

1. SUMMARY: THE GENERAL COMMITTEE JULY 18 APPROVED AT ARTICLE 2 WHICH INCLUDES THE CONCEPT OF PRIORITY OF THE INTER-AMERICAN SYSTEM OVER THE UN IN PEACEFUL SETTLEMENT OF DISPUTES. EARLY DISCUSSION OF ARTICLE 3 INDICATES THERE IS A GOOD OUTLOOK FOR EVENTUAL APPROVAL OF LANGUAGE WHICH WILL AVOID THE UNDESIRABLE DISTINCTION BETWEEN INTRA-CONTINENTAL AND EXTRA-CONTINENTAL ATTACK. END SUMMARY.

2. THE WORKING GROUP ON ARTICLE 2 AND SUBSEQUENTLY THE GENERAL
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PAGE 02 STATE 176204

COMMITTEE(COMPOSED OF ALL DELEGATIONS) APPROVED UN-
AMIMOUSLYTHE FOLLOWING TEXT:

"THE HIGH CONTRACTING PARTIES SHALL MAKE EVERY EFFORT TO ACHIEVE

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006

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THE PEACEFUL SETTLEMENT OF DISPUTES THROUGH THE PROCEDURES AND MECHANISMS PROVIDED FOR IN THE INTER-AMERICAN SYSTEM BEFORE SUBMITTING THEM TO THE SECURITY COUNCIL OF THE UNITED NATIONS."

"THIS PROVISION SHALL NOT BE INTERPRETED AS AN IMPAIRMENT OF THE RIGHTS AND OBLIGATIONS OF THE HIGH CONTRACTING PARTIES UNDER THE TERMS OF ARTICLES 34 AND 35 OF THE UNITED NATIONS CHARTER."

3. DISCUSSION OF ARTICLE 3 BEGAN IN THE AFTERNOON. WE HAD PREPARED A DRAFT ELIMINATING ALL DISTINCTION BETWEEN THE OBLIGATIONS OF MEMBER STATES IN CASE OF ARMED ATTACK FROM WITHIN OR FROM OUTSIDE THE HEMISPHERE. WE DECIDED, HOWEVER, NOT TO PRESENT OUR PROPOSAL WHEN WE DISCOVERED THAT COSTA RICA WOULD INTRODUCE A PROPOSAL WHICH WAS ALMOST IDENTICAL TO OURS. PERU ALSO PRESENTED A TEXT WHICH INCORPORATED MUCH OF THE BASIC PERUVIAN THESIS THAT THE AUTOMATICITY OF OBLIGATION IN CASE OF EXTRA-HEMISPHERIC ATTACK IS LESS THAN WHEN THE ATTACK COMES FROM WITHIN THE HEMISPHERE. THUS THREE PROPOSALS ARE BEFORE THE GENERAL COMMITTEE:

A. PERU'S PROPOSAL PROVIDES THAT THE PARTIES MUCT "ACT IN SOLIDARITY" IN CASE OF AGRESSION (NOT ARMED ATTACK AS IN THE OTHER TWO PROPOSALS AND IN THE PRESENT TREATY). BUT ONLY IN CASE OF INTRA-HEMISPHERIC AGGRESSION WOULD AN ATTACK AGAINST ONE PARTY BE AN ATTACK AGAINST ALL.

B. COSTA RICA'S PROPOSAL WOULD MAKE NO DISTINCTION BETWEEN EXTRA- AND INTRA-HEMISPHERIC ATTACK. OTHERWISE IT WOULD INCORPORATE THE SPECIAL COMMITTEE RECOMMENDATIONS, INCLUDING THE CHANGE WHICH WOULD MAKE THE "ATTACK AGAINST ONE IS AN ATTACK AGAINST ALL" PRINCIPLE APPLICABLE ONLY TO PARTIES TO THE TREATY, RATHER THAN TO ALL AMERICAN STATES.

C. THE SPECIAL COMMITTEE PROPOSAL STATES THAT AN ATTACK AGAINST ONE PARTY IS AN ATTACK AGAINST ALL,NNUT IN A SUBSEQUENT PARAGRAPH FUZZES THIS BY OPENING THE WAY TO AN INTERPRETATION THAT THIS MIGHTNQOT BE AN OBLIGATION BUT A RIGHT.
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4. THOSE SPEAKING IN FAVOR OF MAKING NO DISTINCTION AS TO THE ORIGIN OF ATTACK WERE COSTA RICA, URUGUAY, NICARAGUA, EL SALVADOR, CHILE, BRAZIL, PARAGUAY AND THE U.S.

5. ARGENTINA SPOKE IN FAVOR OF THE SPECIAL COMMITTEE TEXT, ADMITTING IMPERFECTIONS BUT NOTING THAT IT REPRESENTS A COMPROMISE HAMMERED OUT WITH GREAT DIFFICULTY. GUATEMALA AND TRINDAD AND TOBAGO ALSO SUPPORTED THE SPECIAL COMMITTEE TEXT, THOUGH BOTH SEEMED TO HAVE SOME FLEXIBILITY. MEXICO STATES THAT THE DISTINCTION BETWEEN INTRA- AND EXTRA-HEMISPHERIC ATTACK WAS INSUFFICIENTLY ESTABLISHED IN THE SPECIAL COMMITTEE TEXT, BUT FOUND THE PERUVIAN DISTINCTION TOO EXTREME. ECUADOR SEEMED TO

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VACILLATE BETWEEN THE SPECIAL COMMITTEE AND COSTA RICAN TEXTS, BUT STATED THAT SOME DISTINCTION WAS DESIRABLE.

6. USDEL (MAILLIARD) NOTED THAT THE SPECIAL COMMITTEE HAD MADE MANY COMPROMISES IN THE COURSE OF ITS DELIBERATIONS: THE U.S. FELT WHEN THE DRAFT OF ARTICLE 3 WAS ADOPTED, AS WE FEEL NOW, THAT IT WAS NOT REALLY A COMPROMISE AT ALL. THE U.S. HAD YIELDED WITH GREAT RELUCTANCE REGARDING DRAWING ANY REPEAT ANY DISTINCTION BETWEEN INTRA AND EXTRA-CONTINENTAL ATTACK. YET THE RESULTING LANGUAGE HAD NOT SATISFIED THOSE COUNTRIES THAT ADVOCATED A DISTINCTION. UNDER THE CIRCUMSTANCES, THE U.S. BELIEVES WE SHOULD MAKE A CLEAR CHOICE. IF WE NEED ANYTHING IN THIS IMPORTANT DOCUMENT WE NEED CLARITY, YET WHAT WE HUZE IN THE SPECIAL COMMITTEE DRAFT IS CONFUSION. PE
U'S PROPOSAL, AT LEAST, IS CLEAR
IN ESTABLISHING A BROAD DISTINCTION BETWEEN ATTACKS FROM INSIDE THE HIMISPHERE, AND EXTRA-CONTINENTAL ATTACKS. THE U.S. POSITION ON THIS ISSUE IS WEELL KNOWN; WE STRONGLY SUPPORT THE COSTA RICAN PROPOSAL, WHICH TREATS INTRA-CONTINENTAL AND EXTRA-CONTINENTAL ATTACKS IN THE SAME MANNER. THE SPECIAL COMMITTEE
LANGUAGE IS THE WORST OF ALL WORLDS, BECAUSE IT IS NOT CLEAR.
THE U.S. ALSO BELIEVES IT A MISTAKE TO ATTEMPT TO DEAL WITH AGGRESSION IN GENERAL RATHER THAN ARMED ATTACK IN ARTICLE 3. OTHER TYPES OF AGRESSION ARE COVERED BY ARTICLE 6; THE EXPLICIT MEKXANISM FOR DEALING WITH ARMED ATTACK IN ARTICLE 3 SHOULD BE RETAINED.

7. BRAZIL INTRODUCED A PROPOSAL TO RETAIN THE PRESENT TREATY'S
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LANGUAGE WHICH APPLIES ARTICLE 3 TO ALL AMERICAN STATES, REGARD-LESS OF WHETHER THEY ARE PARTIES TO THE TREATY. ONLY CHILE SUPPORTED THIS VIEW. THE PERUVIAN PROPOSAL FOR USING THE WORD 2AGGRESSION"RATHER THAN "ARMED ATTACK" IN THIS ARTICLE LIKEWISE RECEIVED LITTLE SUPPORT.

8. A WORKING GROUP COMPOSED OF GUATEMALA (CHAIRMAN), URUGUAY, BRAZIL, PERU, MEXICO, COSTA RICA AND ECUADOR WAS ESTABLISHED TO ATTEMPT TO WORK OUT A COMPROMISE TEXT. IN VIEW OF THE DIFFERENCES EXPRESSED, THIS MAY BE DIFFICULT.

9. COMMENT: WHILE THE COSTA RICAN TEXT PROBABLY HAS A NARROW MAJORITY, THERE WILL UNDOUBTEDLY BE AN EFFORT TO C INTRODUCE A DISTINCTION BETWEEN TREATMENT OF EXTRA-HEMISPHERIC AND INTRA-HEMISPHERIC ATTACK. WE ARE HOPEFUL THAT THE ULTIMATE COM-PROMISE WILL BE A DISTINCTION WITHOUT A DIFFERENCE."
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